



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201224035**
Release Date: 6/15/2012

Date: March 20, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:
All Years

UIL: 501.04-07

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(4). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040(CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: February 2, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = State
C = Date
D = Individual
F = Year
X = Area Name

UIL:

501.04-07

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(4). The basis for our conclusion is set forth below.

Issues

Do you qualify for exemption under section 501(c)(4) of the Code? No, for the reasons set forth below.

Facts

You were incorporated in the state of B on C. Your Articles of Incorporation indicate that you are organized as a mutual benefit corporation for the specific purpose of maintaining and managing the common areas of the X compound. The Articles of Incorporation state in pertinent part, "The specific purpose of this corporation is to maintain and manage the common area of [you] for the exclusive benefit of the residents thereof and to promote the health, safety and welfare of all of the resident members thereof. ..."

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

You have been inactive since incorporation because it took several years to obtain the necessary permits, engineering, financing, legal titles and to actually build the units in the compound. The project was finally completed in early F.

The X compound includes four condominium units. You charge the condominium owners annual dues. The dues cover maintenance of the exterior of each building including paint, roof, landscape, repair and/or replacement of lights, timers, sprinklers, valves, etc. The dues also cover insurance, water for the landscape, electricity for exterior lights, fire control inspection and water for the sprinklers, legal and accounting costs, inspection fees, reserves and contingency. In F, the last unit was finally sold at which time, you started collecting dues.

Currently, you are governed by D, who was the builder and developer of the property in the compound. It is D's intent to expand the governing body to include homeowners once your tax exemption is determined and all back tax returns have been filed. At that point, D will step down and no longer have any involvement with you.

All of your revenue is from dues paid by the owners of the individual condominium units. All expenses will be used to maintain the exterior of the condominium units (as noted previously) and public areas, such as parking spots for guests, a sidewalk and several landscaped areas.

Law

Section 501(c)(4) of the Internal Revenue Code provides, in part, for the exemption from Federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one, which is operated primarily for the purpose of bringing about civic betterment and social improvements.

Revenue Ruling 69-280, 1969-1 C.B. 152, (Jan. 01, 1969) held that a nonprofit organization formed to provide maintenance of exterior walls and roofs of homes of the members who own houses in a housing development is not exempt from Federal income tax under section 501(c)(4) of the Code.

Revenue Ruling 72-102, 1972-1 CB 149, (Jan. 01, 1972), held that a nonprofit organization, which was formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for use of the residents, was exempt under section 501(c)(4). However, this was because by administering and enforcing covenants, and owning and maintaining certain non-residential, non-commercial properties of the type normally owned and maintained by municipal governments, the organization was serving the common good and the general welfare of the people of the entire development. [Revenue Ruling 69-280 distinguished]

Revenue Ruling 74-17, 1974-1 CB 130, (Jan. 01, 1974), held that an organization, which was formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code.

Revenue Ruling 74-99, 1974-1 CB 131, (Jan. 01, 1974), held that a homeowners association, in order to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public. Otherwise, the homeowners association is not exempt under section 501(c)(4) of the Code.

Revenue Ruling 80-63, 1980-1 CB 116, (Jan. 01, 1980), provided answers to specific questions as to whether the conduct of certain activities would affect the exempt status under section 501(c)(4) of the Code of otherwise qualifying homeowners' associations. Part of the ruling is excerpted here:

Question 1:

Does Revenue Ruling 74-99 contemplate that the term 'community', for purposes of section 501(c)(4) of the Code, embraces a minimum area or a certain number of homeowners?

Answer:

No. Revenue Ruling 74-99 states that it was not possible to formulate a precise definition of the term "community". The ruling merely indicates what the term is generally understood to mean. Whether a particular homeowners' association meets the requirements of conferring benefit on a community must be determined according to the facts and circumstances of the individual case. Thus, although the area represented by an association may not be a community within the meaning of that term as contemplated by Revenue Ruling 74-99, if the association's activities benefit a community, it may still qualify for exemption. For instance, if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community."

Application of Law

You are not described in section 501(c)(4) of the Code because you are not operated for the promotion of social welfare. Instead, you are operated for the benefit of your four tenant members through the operation of a condominium association.

You do not meet the requirements of Income Tax Regulation 1.501(c)(4)-1(a)(2)(i), because you are not primarily engaged in promoting, in some way, the common good and general welfare of the people of the community. You do not bring about civic betterment and social improvements to the community as a whole. Rather, your operations are meant to clearly benefit your tenant members.

You are similar to the organization denied exemption in Revenue Ruling 69-280, *supra*. Like the organization in the ruling, you will maintain the exteriors of the condominium units of your development.

You are not similar to the organization exempted in Revenue Ruling 72-102, *supra*, because you are not serving a "community" by maintaining streets, sidewalks and other common area that are used by the entire community. Your operations will maintain only the parking areas and sidewalk that are located inside your compound. Also, you are different from that organization because you are not a large housing development. Instead, your compound consists of four units.

You are indistinguishable from the organization described in Revenue Ruling 74-17, *supra*. Like the organization in the ruling, you were formed by interested parties (in your case, the developer) to provide for the management, maintenance and care of the common areas. Your income is composed of membership assessments enforced by your Declaration of Restrictions and is primarily used to provide direct economic benefits to the four unit owners by improving the overall compound (as opposed to the community at large). Any benefits to the larger community are minor and incidental in nature. Where the benefit from an organization is limited to that organization's members (except for some minor incidental benefits the community as a whole), the organization is not organized and operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

You do not meet the provisions set forth in Revenue Ruling 74-99, *supra*, to be recognized as a homeowners association that is exempt under section 501(c)(4). This is because your main purpose is to maintain the exteriors of private residences, which is shown to be a major barrier to exemption under section 501(c)(4) of the Code.

Your "community" consists of only four condominium units. Thus, maintaining the exteriors of these units does not confer a benefit on your surrounding population. Maintaining private residences only benefits the owners. As noted in Revenue Ruling 80-63, *supra*, the size of the community is irrelevant so long as you can show that your activities are aimed at benefitting more than just the individuals that reside there. Your operations only benefit the owners of the condominium units.

Applicant's Position

After being notified of our intent to propose denial of exemption, you did not provide any additional information for us to consider.

Conclusion

Based on the information you have provided, your primary purpose is to maintain the exterior walls and roofs, and other common areas of the condominiums owned by your members. As such, you are not promoting the social welfare of the community or serving any other public purpose described in section 501(c)(4) of the Code. Instead, you are merely serving the private interests of the owners of the condominiums.

Accordingly, you are not exempt from federal income tax under section 501(c)(4) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
P.O. Box 2508 Room 7-008
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure, Publication 892